

§102 Rejection of the Claims

Claims 19 to 25, 27 to 36, 94 to 98 and 100 to 102 were rejected under 35 USC § 102(e) as being anticipated by Agarwal (U.S. Patent Application Publication # 2002/0056864 A1). Applicant traverses these rejections for the reasons stated below.

Applicant respectfully submits that the Office Action did not make out a *prima facie* case of anticipation because the reference does not teach each and every claim element arranged as in the claims.

Claim 19 recites "a contact coupling the first device to the second device; and an barrier structure encircling the contact."

In contrast, Agarwal relates to a barrier layer within a device or within a contact. For example, the Office Action states "Agarwal (**figures 1A to 3L**) specifically figure 3L show an integrated circuit comprising: a first device **270,260,245**; a second device (**FET**); a contact **240** coupling the first device to the second device; and an barrier structure **245** encircling the contact." Reviewing the Agarwal figures, barrier layer 245 is disposed on contact 240 and does not encircle contact 240. Further, Applicant can not find in Agarwal a barrier structure encircling the contact coupling a first device to a second device, as recited in claim 19. Thus, since the Agarwal barrier layer does not encircle a contact coupling a first device to a second device, Agarwal does not anticipate claim 19.

Further, Applicant can not find in Agarwal any teaching or suggestion of a structure encircling layers that couple a first device to a second device, as recited in the claims. For example, in Agarwal Figure 3L, for a capacitor defined by layers 270, 260, 250, the capacitor is coupled to the underlying device by layers 245 and 240 without a structure encircling layers 245 and 240.

Independent claims 22, 25, 28, 34, 94, 97, 100 recite similar elements regarding layers that couple a first device to a second device where the layers are encircled by a structure. Thus, claims 22, 25, 28, 34, 94, 97, 100 are patentable over Agarwal for the reasons stated above plus the elements of the claims. Further, all claims that depend on these independent claims are patentable over Agarwal for the reasons stated above plus the elements of the claims.

Applicant respectfully requests withdrawal of these rejections to claims 19-25, 27-36, 94-98, and 100-102, and reconsideration and allowance of these claims.

Comment regarding *In re Woodruff*

The Office Action references *In re Woodruff* in its section regarding rejections under 35 U.S.C. § 102(e). *In re Woodruff* is related to an analysis of obviousness determination, and is not applicable to 35 U.S.C. § 102(e) and the context to which it was applied.

First §103 Rejection of the Claims

Claims 19 to 36 and 94 to 102 were rejected under 35 USC § 103(a) as being unpatentable over Agarwal (U.S. Patent Application Publication # 2002/0056864 A1) in view of Moise et al. (U.S. Patent No. 6,211,035). Applicant traverses these rejections for the reasons stated below.

Applicant respectfully submits that Agarwal is not prior art under §103 with respect to claims 19-36 and 94-102 of the present application. A reference asserted under 102(e) that was commonly owned with an application at the time the invention was made, cannot preclude patentability under 35 U.S.C. 103 of the claims of the application when the application was filed on or after November 29, 1999. *35 U.S.C. 103(c); 1233 OG 55 (April 11, 2000)*. The present application was filed on 31 August 2000, as shown by the attached copy of the Filing Receipt, which is after November 29, 1999. Agarwal and the present application were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. Thus, Agarwal is commonly owned with the present application and is not prior art under §103 with respect to claims 19-36 and 94-102 of the present application.

The above notwithstanding, Moise is relied upon in the Office Action to disclose a second device. Hence, Moise does not cure the deficiencies of Agarwal. Therefore, applicant respectfully requests withdrawal of the rejections and reconsideration and allowance of claims 19-36 and 94-102.

Second §103 Rejection of the Claims

Claim 26 was rejected under 35 USC § 103(a) as being unpatentable over Agarwal (U.S. Patent Application Publication # 2002/0056864 A1). Applicant traverses these rejections for the reasons stated below.

Applicant respectfully submits that Agarwal is not prior art under §103 with respect to claims 19-36 and 94-102 of the present application. A reference asserted under 102(e) that was commonly owned with an application at the time the invention was made, cannot preclude patentability under 35 U.S.C. 103 of the claims of the application when the application was filed on or after November 29, 1999. *35 U.S.C. 103(c); 1233 OG 55 (April 11, 2000)*. The present application was filed on 31 August 2000, as shown by the attached copy of the Filing Receipt, which is after November 29, 1999. Agarwal and the present application were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. Thus, Agarwal is commonly owned with the present application and is not prior art under §103 with respect to claims 19-36 and 94-102 of the present application.

The above notwithstanding, claim 26 is dependent on patentable claim 25 and is therefore patentable. Therefore, applicant respectfully requests withdrawal of the rejections and reconsideration and allowance of claim 26.

Documents Cited but Not Relied upon for this Office Action

Applicant has not responded to the assertion of interest to the instant application stated for the patents cited but not relied upon by the Office Action since these patents are not relied upon as part of the rejections in this Office Action. Applicant is expressly not admitting to any assertion of their pertinence and reserves the right to address the assertion should it form a part of some future rejection.



CONCLUSION

RECEIVED

OCT -3 2002

TECHNOLOGY CENTER 2800

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone

Applicant's attorney at (612) 371-2157 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

FRED FISHBURN

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 371-2157

Date 25 September 2002 By

David R. Cochran
Reg. No. 46,632

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 25 day of September, 2002.

Name

Tina Kohout

Signature